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## ***Between a Rock and a Hard Place***

This can't be what the founders of Indian gaming law had in mind, but it might be the future of tribal casinos.

It's not easy to picture a place less evocative of Native American culture than a Hard Rock Café, which is precisely the point of the deal between Florida's Seminole tribe and Hard Rock Café International. The casinos they build will be monuments to the progress of tribal gaming - and of tribal political savvy - over the past decade.

Stalled since the official groundbreaking in early 2001, the Seminole and Hard Rock announced in June 2002 that financing had finally been secured for two hotel-casinos in Tampa and Hollywood, Fla.

The resorts, expected to open in the first quarter of 2004, will offer amenities on the scale of Las Vegas: nightclubs, spas, entertainment facilities, several restaurants - and of course, gaming floors.

The gaming floors constitute the main difference between these casinos and their commercial kin. Because the Seminole do not have a Class III compact with the state, gaming will be limited by the tribe's federal Class II license - which includes high-stakes bingo, low-stakes poker and video gaming machines that dispense paper tickets instead of coins.

But the disadvantage will be negligible; apart from high-stakes table games, players won't miss much. The colorful new machines, while technically not slots, will be equipped with flashing lights and clanging bells to signal winners. And with the nearest "real" casinos hundreds of miles away in Mississippi, the Seminole stand to make a killing.

Moreover, both the tribe and Hard Rock executives made it clear back in 2001 - and continue to suggest - that they expect eventually to be allowed full-fledged Class III gambling.

That's a precocious ambition, considering the state's firm and long-standing opposition to casino gambling. Then again, the Seminole are an historically precocious tribe.

While not quite as famous - make that, infamous - as tribes in California and New England, the Seminole have been at the front of several defining moments in U.S. Indian gaming law. They've become a political and entrepreneurial powerhouse by fully leveraging three advantages they share with Native American gaming tribes across the country.

The first is the ability to develop casinos in concert with private companies. Many tribes pursued such partnerships in the 1990s to exploit the financial backing and management expertise of commercial operators. Those motives continue to drive many private-tribal partnerships today, though some tribes have gained enough savvy over

the years to reclaim control of their own facilities and marketing efforts.

For the Seminole, branding is the big benefit of partnering with Hard Rock. Hard Rock's stake consists of a guaranteed annual licensing fee of three percent of net gaming revenue or \$3 million, whichever is higher, plus three percent of hotel revenues and full profits from a Hard Rock Café in the Hollywood complex. In exchange, the tribe gets a look and feel that's fresh, young and - perhaps most important - world famous. This can't be what the creators of the Indian Gaming Regulatory Act had in mind, but it might be the future of tribal gaming.

The second advantage in the corner of any tribe with the means to use it is federal campaign finance law. In the 1996 election cycle, the Seminole tribe donated around \$350,000 to federal campaigns, more than 80 percent of which went to Democratic campaigns and committees. In the 2000 election cycle, the tribe displaced the Mashantucket Pequot tribe of Connecticut as the nation's top tribal contributor.

Much of that money was "soft money," cash that can be donated to parties in unlimited amounts. But, according to a 2000 ruling by the Federal Election Commission, tribes also are not subject to the \$25,000 aggregate cap on "hard money" contributions to specific candidates that limits other donors. In other words, a tribe could donate \$1000 apiece to the campaigns of as many federal candidates as they like. In a concerted effort, the power could be influential -- and the wealthier gaming tribes become, the more likely that is.

Thus it was irresistible for observers to connect the dots when, in the final days of the Clinton administration, outgoing Bureau of Indian Affairs officials ruled that the Seminole's faux video slot machines were permissible under their Class II status. That ruling outraged Florida officials who'd been fighting the machines for years -- and brings us to the third factor in the tribe's favor.

The divide between state and federal authorities in establishing and enforcing tribal gaming rights is the worst weakness in U.S. gambling law today, and the Seminole are a seminal example.

The tribe attempted to negotiate Class III compacts with two successive governors in the early 1990s, going so far as to offer the state a 45 percent share of gaming profits. Citing failed gambling referendums in 1978, 1986 and 1994, officials refused to talk. The stymied tribe then sued the state, resulting in a precedent-setting 1996 Supreme Court ruling that Florida was immune from federal lawsuits brought by tribes.

With all routes to a Class III license closed off, the Seminole did what other tribes have done - they tested the limits of their Class II license, and used the state's video lottery terminals as grounds for launching their own quasi-slots. Federal authorities were mostly complicit with these strategies - and not without reason, given the state's hypocritical penchant for lottery devices. At this point, state regulators who were determined to beat back the Seminole's ambitions five years ago seem to have thrown in the towel. "There's nothing I can do," said Assistant Attorney General Jon Glogau in a recent Orlando Sentinel story. "I've moved on to other things."

And that's how we've arrived at the present situation in Florida and several other states. The types of gambling flourishing now are those that states own (lotteries) and that states can't prevent (tribal, cruise ship, and to some degree Internet gaming). In the middle are commercial casinos, which states can - and do - keep under tight control. Florida's lawmakers continue reject measures, including one this year, to allow slots at the state's long-suffering racetracks despite the abundance of other gaming options in the state.

What hope does that leave for private gaming expansion? Commercial enterprises that aren't partnered with tribes should think federal and look forward.

Even though gambling is considered a state issue, the critical policies today are all federal: The Interstate Wire Act and ongoing efforts to pass an explicit federal ban on Internet gambling; other laws that limit where Americans can and can't gamble, such as aboard airplanes; and of course, the increasingly inadequate Indian Gaming Regulatory Act. Changes in any of those areas are likely affect the industry more than small steps forward or backward in individual states.

While tribal and state gaming are advantaged politically in states like Florida, purely private operations have an advantage, too. They can do what governments and tribes historically have not done well: plan forward. They can seek out and invest in new strategies that work within existing gaming law that might resolve the objections of lawmakers who are worried about new forms of forms, and that will encourage consumers to choose private gambling venues over other similar opportunities. Operations like the Seminole casinos call for a strategic response. If more Vegas-like casinos are the future of Indian gaming, what will the future of private casinos be?

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